

NOTICE OF INTENT

Department of Revenue and Taxation Excise Taxes Division

Sale and Use of Dyed Special Fuels (LAC 61:I.Chapter 33)

Under the authority of R.S. 47:802(1)(C) and R.S. 47:814(A) and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue and Taxation, Excise Taxes Division, proposes to amend Chapter 33 of Title 61 of the Louisiana Administrative Code to reflect recent amendments to R.S. 47:803, 812, 814 and the enactment of R.S. 47:802(1).

Act 603 of the 1995 Regular Legislative Session amended R.S. 47: 803, 812, and 814 to make provision for the use of dyed special fuels and for penalties associated with the improper on-road use of the dyed fuel. Also enacted was R.S. 47:802(1) to authorize a mechanism for a credit or refund of taxes paid on fuel purchased for nontaxable use when and only when untaxed dyed fuel is not available and to direct the Excise Taxes Division to promulgate rules necessary to regulate these activities.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered By the Secretary of Revenue and Taxation

Chapter 33. Petroleum Products: Special Fuels Tax

Subchapter A. Retail Dealers of Special Fuels

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§3307. Sale of Dyed Special Fuels

A. All suppliers and dealers of special fuels who have separate facilities for storing dyed special fuels on which no fuel tax has been paid, other than liquefied petroleum gas or compressed natural gas, shall clearly mark the storage facility with notice that the fuel is dyed and/or chemically marked. Such marking shall conform to requirements of R.S. 47:804(D) or as provided by 26 U.S.C. 4082 and the regulations promulgated thereunder. Dyed special fuels are to be used for nontaxable purposes only.

B. Any supplier or dealer of special fuels or any other person who shall sell or offer to sell dyed and/or chemically marked special fuels for any use other than a nontaxable use shall be in violation of R.S. 47:812 and shall be subject to a penalty. The penalty increases with subsequent violations.

C. Exception: Fuel sold for use in those vehicles which are subject to state tax and allowed to use dyed fuel on the highway under 26 U.S.C. 4082 or the regulations adopted thereunder. This use shall not be considered a violation of R.S. 47:812.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:812.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Excise Taxes Division, LR 22:

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Subchapter B. Users of Special Fuels

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§3355. Refunds or Credits; Undyed Diesel Fuel Used for Other than Highway Purposes

The intent of R.S. 47:802(1) is to provide a mechanism for a credit or refund of taxes paid on fuel purchased for nontaxable use only when untaxed dyed fuel is not available.

1. A registration form must be completed and submitted to the secretary of the Department of Revenue and Taxation for approval prior to first purchasing any tax-paid special fuel for a nontaxable use when dyed fuel is not available, if the user intends to obtain a credit or file for a refund of special fuel taxes paid on fuel purchased for nontaxable use. Upon approval, a permit certificate will be furnished to the applicant.

2. Users may assign, to the approved licensed suppliers who sold or delivered the fuel to the user, the right to their refund of the taxes paid on special fuels. The licensed supplier to whom assignment is made must have made application to and received approval from the Department of Revenue and Taxation prior to being able to issue a credit to the user for the amount of tax. Approved licensed suppliers must claim the credit on the return filed for the reporting period in which the fuel was purchased and credit given. Users who opt to assign the right to their refund to the approved licensed suppliers who sold or delivered the fuel to the user must submit a new registration for approval prior to filing their own refund claims.

3. Users who file their own refund claims must file the claims with the secretary within 30 days after the end of the quarter in which the fuel purchases were made. The claims must set forth the amount of fuel purchased during the quarter with the amount of tax paid, the original fuel invoices, the licensed suppliers from whom purchased, and the purpose for which the fuel was used. The claim must also contain, on a form to be supplied by the department, a list of highway and nonhighway vehicles in which fuel was used. Fuel used to power reefers, power take-off units or similar auxiliary equipment is not eligible for refund or credit when these items are powered off the main fuel tanks.

4. If a claimant does not submit a claim during a period of 12 consecutive months, 60 days after the end of such period, his registration will be voided and removed from the files, unless notification is received that claimant expects to make a claim in the near future. When a registration has been voided for this reason, a new registration must be submitted before purchasing special fuels on which a refund will be claimed.

5. Not more than one claim may be filed for any particular period and all claims must be signed by the claimant or his authorized agent. When submitting a claim, only the designated claim form should be completed and returned to the Department of Revenue and Taxation. A seller's invoice must be submitted with the claim. In order to be acceptable for review, all invoices submitted must have the amount of special fuel taxes paid marked by the dealer before a refund can be made.

6. Claims that are returned to the claimant for correction must be corrected and returned to the Department of Revenue and Taxation within 30 days.

7. Adequate records must be maintained by refund claimants to disclose the nature of the work performed, number of gallons used, and the type of vehicle or equipment in which the special fuel was used. Each refundable purchase of tax paid fuel intended for a nontaxable use must be invoiced by the dealer separately.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:802(1).

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Excise Taxes Division, LR 22: **§3357. Use by State Agencies, Parish and Municipal Governments, and Other Political Subdivisions**

A. Clear, dyed or chemically marked fuel purchased by state agencies, parish and municipal governments and other political subdivision intended for on-road use is subject to state fuel tax.

B. When dyed fuel is not available, clear fuel intended for off-road use may be purchased without state tax from a contracted supplier upon presentation of a certificate issued by the Louisiana Department of Revenue and Taxation authorizing said purchase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:803.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Excise Taxes Division, LR 22: **§3359. Sales; Uses of Dyed Fuel**

A. All users who have separate facilities for storing dyed special fuels on which no fuel tax has been paid, other than liquefied petroleum gas or compressed natural gas, shall clearly mark the storage facility with notice that the fuel is dyed and/or chemically marked. Such marking shall conform to requirements of R.S. 47:804(D) or as provided by 26 U.S.C. 4082 and the regulations promulgated thereunder. Dyed special fuels is to be used for nontaxable purposes only.

B. Any supplier, dealer or user of special fuels or any other person who shall sell or offer to sell dyed and/or chemically marked special fuels for any use other than a nontaxable use shall be in violation of R.S. 47:812 and shall be subject to a penalty. The penalty increases with subsequent violations.

C. Exception: fuel sold for use in those vehicles which are subject to state tax and allowed to use dyed fuel on the highway under 26 U.S.C. 4082 or the regulations adopted thereunder. This use shall not be considered a violation of R.S. 47:812.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:812.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Excise Taxes Division, LR 22: **§3361. Use by Farmers**

A. In the case of farmers who operate farm use trucks which use undyed special fuels other than liquefied petroleum gas and compressed natural gas in operating for both taxable and nontaxable purposes, the secretary shall, when requested, reach an agreement with the farmer wherein the amount of fuel used in each truck shall be estimated and the tax paid each month on the basis of the estimate.

B. The minimum estimate will be no less than 75 gallons per month per vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:814.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Excise Taxes Division, LR 22: All interested persons may submit data, views, or arguments, in writing to R. Charles Bradley, Director, Excise Taxes Division, Department of Revenue and Taxation, Box 3863, Baton Rouge, LA 70821. All comments must be submitted by 4:30 p.m., Tuesday, April 23, 1996. A public hearing will be held on Wednesday, April 24, 1996, at 10 a.m. in the Secretary's Conference Room of Department of Revenue and Taxation, 330 North Ardenwood Boulevard, Baton Rouge, LA 70806.

John N. Kennedy
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Sale and Use of Dyed Special Fuels**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no explicit increase in costs to implement this rule. The department will absorb any costs associated with the application, certification and review of refund/credit claims with existing personnel and budget authority.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no significant effect on revenue collections of state or local governmental units as a result of this proposed rule. There may be a marginal indeterminable increase in Transportation Trust Fund revenue due to increased tax compliance, based upon results of similar federal tax and dye requirements.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule provides a mechanism for obtaining reimbursement of taxes that were paid on taxed clear fuel that had to be purchased for a nontaxable use when untaxed dyed fuel was not available. These costs and/or benefits cannot be determined with accuracy because the current level of noncompliance cannot be ascertained.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should have no effect on competition or employment.

John Neely Kennedy
Secretary
9603#062

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